

February 3, 2003

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Comments. In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147)

Dear Chairman Powell:

The Alliance for Public Technology (APT) would like to reiterate its call for the Commission to reform the unbundled network element (UNE) regime to foster facilities based competition, remove unnecessary barriers to investment and accelerate the deployment of advanced telecommunications services. As the decision approaches in the Triennial Review, the Commission is presented with an enormous opportunity to create an environment that best serves consumers by offering real competitive choices and access to life enhancing new communications technologies.

The Alliance for Public Technology (APT) is a nonprofit organization of public interest groups and individuals. APT's members work together to foster broad access to affordable, usable information and communications services and technology for the purpose of bringing better and more affordable health care to all citizens, expanding educational opportunities for lifelong learning, enabling people with disabilities to function in ways they otherwise could not, creating opportunities for jobs and economic advancement, making government more responsive to all citizens and simplifying access to communications technology. To this end, it is APT's goal to:

make available as far as possible, to all people of the United States, regardless of race, color, national origin, income, residence in rural or urban area, or disability high capacity two-way communications networks capable of enabling users to originate and receive affordable and accessible high quality voice, data, graphics, video and other types of telecommunications services.¹

Promoting Robust Competition and Accelerating Universal Deployment of Advanced Services

Encouraging robust, facilities-based competition and deployment of advanced services requires a regulatory structure that is flexible and forward-looking. Outdated rules only

¹ Alliance For Public Technology, *Principles to Implement the Goal of Advanced Universal Service* at 3 (1995).

hinder the development of next generation telecommunication services. A positive regulatory regime, comprised of policies designed to enhance competition and investment by both incumbents and competitors, is a critical step. The following suggested recommendations for Commission action within the Triennial Review are tools to help achieve the twin goals of competition and deployment.

1. Exclude those network elements – such as switching – that are currently available in abundance in the marketplace.
2. Exclude broadband networks and other new investments from unbundling obligations.
3. Establish a workable transition period to ensure services remain available to consumers as competitors adapt to new rules.
4. Create strict performance standards and monitoring mechanisms to ensure service quality and efficient remedies in response to violations.
5. Maintain certainty and stability in the regulations across jurisdictions. The Commission alone should formulate the list of elements included in unbundling, while the states continue to possess authority over pricing and performance monitoring.

The Negative Effects of Unbundling Obligations

The goal of the Telecommunications Act of 1996, stated in its preamble, is “To promote competition and. . .encourage the rapid deployment of new telecommunications technologies.” Section 706 of the Act, which APT took a lead role in crafting, encourages deployment of advanced telecommunications services and removal of barriers to infrastructure investment. The unbundling regime has not significantly contributed to any of these goals.

Unbundling discourages infrastructure investment and does not foster long-term, facilities-based competition. By allowing competitors to lease facilities at below-cost rates, there are no incentives for the incumbent to invest in capital-intensive new technologies or for the competitors to build their own networks. The incumbent Bell companies have drastically reduced capital expenditures in the past year. From 3rd Quarter 2001 through 3rd Quarter 2002, Bell companies slashed \$14.8 billion in investment.² While UNE-P creates a short term bump in competition statistics, it actually harms the long term potential for development of advanced services by impeding investment.

In addition to cuts in investment, UNE-P has contributed to devastating job loss in the telecommunications sector. The Bell companies reduced their workforce by over 32,000 in 2002. If this industry, which drove the economy to staggering heights not too long ago, is to recover, then the Commission must revise its rules and create a competition model that is fair and progressive and encourages growth.

² Communications Workers of America *Ex Parte Notice*, December 11, 2002, CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147.

Beyond investment and employment, UNE has impeded the deployment of advanced services to all sectors of our society. High cost areas of the country are still without access, because incumbent providers will not invest the enormous amounts of capital necessary in these communities if competitors are allowed to use this expensive infrastructure without assuming the financial risk of investment. If the goal of universal broadband deployment is to be reached, the rules governing providers must be equal.

Providing Choices and Benefits for All Consumers

By eliminating the temporary fix of UNE-P and instituting a regulatory structure that promotes facilities based competition, the Commission can deliver consumers a wide variety of benefits. A competitive market with facilities based providers can accelerate opportunities for consumers to enhance the quality of life through advanced services and applications, such as telemedicine, distance learning, public safety and many others.

Discouraging infrastructure investment does not help consumers. Creating false competition based on a resale model does not help consumers. Continuing the UNE regime in the broadband world will not help consumers. In fact, the UNE rules will dramatically slow the arrival of true broadband services such as the ubiquitous, two-way connections made possible by technologies such as fiber to the home.

Consumers benefit when they are given real choices. Expanding facilities based competition will only provide more options at better prices. Encouraging greater infrastructure investment will bring services to areas of the country previously underserved. Now is the time to provide the full range of telecommunication services and benefits to all consumers.

Fulfilling the Mandate

In order to achieve the goals of the Telecommunications Act and provide consumers with real choices and opportunities, the UNE regime must be reformed. Long term growth and development of the telecommunications infrastructure is critical to our nation's future, but it will not progress as needed if the regulations stifle innovation and discourage investment. Consumers deserve access to every possible form of telecommunications services and APT urges the Commission to seize this important opportunity to create a vibrant telecommunications future for all.

Sincerely,

Alliance for Public Technology
Community Action Partnership
National Grange of the Order of Patrons of Husbandry

Cc: Commissioner Kathleen Abernathy
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Kevin Martin